

AGENDA ITEM



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Approve Entry Agreement for White Slough Water Pollution Control Facility to allow Department of Water Resources to conduct noninvasive tests, and Authorize the City Manager to Execute the Agreement on behalf of the City of Lodi.

MEETING DATE: August 5, 2009

SUBMITTED BY: City Attorney

RECOMMENDED ACTION: Approve Entry Agreement with Department of Water Resources, and authorize the City Manager to Execute the Agreement on behalf of the City.

BACKGROUND INFORMATION: The Department of Water Resources requires access to White Slough to perform studies for the Environmental Impact Report for the "Bay Delta Restoration Plan," otherwise known as the Peripheral Canal. Compensation is minimal at \$500.00 for noninvasive entries. Staff has negotiated revisions to the agreement to require further agreement prior to any entry that would impact operations. The State would have the power to require access through eminent domain absent entry of this Agreement.

FISCAL IMPACT: \$500 in revenue.

A handwritten signature in black ink, appearing to read "D. Stephen Schwabauer", written over a horizontal line.

D. Stephen Schwabauer
City Attorney

APPROVED:

A handwritten signature in black ink, appearing to read "Blair King", written over a horizontal line.

Blair King, City Manager

OWNER: City of Lodi

Project: Bay Delta Conservation Plan (BDCP)

DWR Parcel No(s):	DCAS-703
County:	San Joaquin
APN(s):	055-150-29

TEMPORARY ENTRY PERMIT

OWNER gives permission to the Department of Water Resources of the State of California (DWR) and its officers, employees, agents and contractors, to enter with all necessary equipment onto OWNER's land in the county of San Joaquin, State of California, generally described as Assessor's Parcel No(s). 055-150-29, marked on the attached map (Property). This permission is granted for the purpose of conducting the activities described in Exhibit A of this Permit, including ground and aerial surveys, engineering, biological, geological, archaeological, floral and faunal studies, Phase 1 Environmental Site Assessments, and for other incidental purposes as may be required. This permission is subject to the following conditions:

1. DWR will exercise reasonable precautions to avoid damages and to protect persons and property. DWR's survey and investigation team members shall read and heed all signs posted as notification of potentially hazardous chemical substances used on the Property.

DWR agrees not to unreasonably interfere with operations on the Property. DWR shall limit vehicular and pedestrian access to those routes reasonably identified by OWNER or his/her representative. If access is by dirt roads, every effort will be made by DWR to avoid producing excess dust and to avoid access by vehicles where muddy conditions could cause damage to the roads.

DWR acknowledges that the Property may include, without limitation, the use of pesticides, herbicides, fertilizer or other chemical substances (collectively "Substances"). DWR hereby agrees to accept and assume any and all risks of injury or damage arising from or relating to entry upon or use of the Property including, without limitation, injury or damage from exposure to Substances, except for such risks caused by the gross negligence or intentional tortious conduct of OWNER.

2. DWR understands and agrees that any information gathered on OWNER's property in accordance with activities described in Exhibit A of this Permit and for other incidental purposes as may be required is highly sensitive and strictly confidential, and shall be maintained by DWR with the utmost confidence. DWR agrees that such information about the Owner's property, operations, practices, the lands environmental data, etc. obtained by the implementing agency or any of its employees, officers, agents, contractors and/or representatives shall remain strictly confidential and shall not be disclosed or revealed to outside sources or used for any manner inconsistent with this Permit agreement, except as required by law.

Subject to conditions listed in Civil Code Section 1798.24. DWR shall establish and implement appropriate and reasonable administrative, technical, and physical safeguards to ensure the security and confidentiality of records.

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OWNER's Name, Address, and Phone No.

CITY OF LODI, a municipal corporation

P. O. Box 3006, Lodi, CA 95241

Phone No. (209) 333-6700

Signature **BLAIR KING, City Manager**

► **Attest:**

Signature **RANDI JOHL, City Clerk**

Date: _____

APPROVED AS TO FORM:

D. STEPHEN SCHWABAUER, City Attorney



CONSENT OF TENANT(S)

We, the Tenants of the Property described in this Temporary Entry Permit, are under lease with OWNER, hereby consent to the execution of this Temporary Entry Permit. We also agree that all damages payable will be paid to OWNER as described above.

Signature _____

Date: _____

Recommended for Acceptance:

► Karen G. Shine, Staff Counsel III _____ Date _____

■ Quentin Green, Land Agent _____ Date _____

► Carolyn Dabney, Senior Land Agent _____ Date _____

ACCEPTED:

Department of Water Resources of the State of California

► Allan T. Davis,
Supervising Land Agent

Date: _____

(Mailing Address of Tenant if different than above)

Phone No. _____

OWNER: City of Lodi

Project: Bay Delta Conservation Plan (BDCP)

DWR Parcel No(s): DCAS-703

County: San Joaquin

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3. DWR will only record information of the type indicated within the delineated **areas(s)**, and will not record or disclose any inadvertently observed information of significance. such as **special** status svecies or its location, outside of the delineated **areas(s)** unless otherwise required by law
4. OWNER assumes no liability for loss of property, damage to properly, or injuries to or deaths of agents, contractors, or employees of DWR by reason of the exercise of privileges given under this Permit.
5. \$500.00 represents the probable damage amount of compensation for entry by DWR and/or its contractors. OWNER will receive this sum up front upon execution of this Permit.
6. Nothing in this Permit precludes OWNER from filing a **claim(s)** with the State Victim Compensation and Government Claims Board for any loss or expense that OWNER or its tenant may suffer that is caused by DWR or that is due to exercise by DWR of the rights granted by this Permit if the actual damages and interference exceeds the amount paid by DWR.
7. In addition to the payment made pursuant to Paragraph 5 of this Permit, DWR agrees to indemnify and hold OWNER harmless from any physical damage, including physical damage to **OWNER's** crops, actually and proximately caused by the activities authorized by this Permit. DWR also agrees to either reimburse OWNER for any damage to **OWNER's** roads, fences, or other property occurring by reason of the exercise of rights granted herein, or to replace or restore said Property.
8. DWRs access to the Property may occur at various times during the day. In some instances, depending on the species being studied, DWR access may also occur in the late evening or after **dark**. To complete the studies, DWR staff will require access to the Property for one (1) day up to sixty (60) **non-consecutive** days. DWR will give OWNER a minimum of five (5) days verbal notification to be followed by written notification; however, when practical, DWR will attempt to provide OWNER more notice. The verbal notification will include a description of the activities that will be conducted on the Property and as much **as** possible, a description of the area to be surveyed. The written notification will confirm the verbal notification and will provide OWNER information pertaining to the purpose of the various types of studies to be conducted on the Property and the point of contact(s) for DWR. If so indicated by OWNER prior to entry by DWR, DWR shall only come onto the Property with a representative of OWNER and shall be escorted during DWRs entire visit. OWNER understands that no compensation will be provided for any expenses related to escorting DWR staff on the Property.
9. Following compilation of the data gathered and within sixty (60) days of **OWNER's** written request, DWR will provide OWNER with all data, including but not limited to notes, surveys, reports, and photographs, obtained from any investigation on the Property.
10. This permit expires on December **31**, 2011, but DWRs access to the Property during that time period will be limited to no more than ~~sixty~~ (60) **non-consecutive** days.
11. OWNER does not waive any claim or right of legal action.
12. Notwithstanding anything in this Agreement to the contrary, DWR will provide 30 days notice of any access or **studies/surveys** which could impact the operations of the OWNER, the San Joaquin County Vector Control District, the Northern California Power Agency, or any other tenant of OWNER (i.e. any access that entails more than passive observation). Upon such notice, OWNER shall have 15 days to notify DWR if such access or **studies/surveys** will unreasonably impact OWNER'S operations and have the right to refuse the access or **studies/surveys**.

Exhibit A

PROJECT STUDIES AND SCOPING

For purposes of the Temporary Access Permit, all survey-related activities will be conducted by qualified and trained DWR personnel and/or authorized representatives (contractors/consultants) under the direction of a DWR Project Manager. DWR may conduct the following checked activities:

☐ I. GEODETIC MAPPING

Geodetic mapping involves measuring the shape and area of the Property by using the exact position of geographical points as a reference. The geodetic mapping activities will require the installation of targets on the Property and then using a small aircraft to take photographs while flying over the Property. All flights will occur during daylight hours and two (2) flights will be required. Those flights will be spaced several weeks apart. Mapping will require from one (1) to three (3) site visits. Site visits may last up to eight (8) hours in duration and will require two (2) persons on the first site visit and one (1) person on any subsequent site visits.

In addition to the small aircraft, equipment used to complete the mapping activity will include standard survey trucks and, if the Property is muddy, all terrain vehicles for property access. A tripod, a hand-held receiver, antenna and data collector unit will also be used. The targets will be set by using a sledgehammer to drive iron pipe flush with the ground surface. The iron pipes will be placed at the center of an aerial ground target. GPS surveying equipment will then be used to determine the exact location of the target. If livestock is present, chicken wire (or a similar type of fence fabric) will be installed around the target marker by using a hand-held staple gun and hammer. Staff will return with GPS equipment to resurvey, check, clean, and repair the target when necessary. After the second aerial flight has been completed, staff will return to remove target material from the ground surface. Property owners may elect to retain the iron pipes installed on the Property for future use.

Field surveying will occur to study possible future project alignments. Surveying activities will use two (2) by two (2) inch wood lath-stakes with flagging attached to the stakes and they will be placed in the ground following a lineal progression that may traverse the Property. Survey crews consisting of three (3) to five (5) individuals will be on site during daylight hours. Site visits may occur on non-consecutive days and may take from six (6) to sixteen (16) hours to complete. Survey crews will use a vehicle and hand-held field surveying equipment to complete field surveys.

Geodetic, mapping, and surveying activities in the study area may have a significant impact on any future design, scheduling and/or cost of a preferred alignment for a future project.

☒ II. ENGINEERING GEOLOGY

Geologic activities will include field surveying, mapping and geotechnical exploration. The geotechnical exploration will include auger and/or mud rotary drilling, soils sampling using a Standard Penetrometer Test (SPT) barrel and Shelby tubes, Cone Penetrometer Testing (CPT), resistivity surveys, and the installation and monitoring of groundwater monitoring wells. The excavation of test pits is possible. Prior to exploration activities, several site inspections will be needed to evaluate access, potential environmental restrictions, potential cultural and archaeological resources, the locations of underground utilities, etc. Engineering Geology Activities: Site exploration will be performed in phases. Those phases are to measure electrical resistivity, drill exploration and installation of test pits. Activities for each phase can last from a few hours to a few days and are described as follows:

1. Electrical resistivity measurements will be taken that require personnel to set up equipment and perform tests. Electrical resistivity equipment consists of hand-held and suit case-size equipment. Four (4) one-half inch diameter steel probes are temporarily hammered about twelve inches deep into the ground and are connected together with wires. Measurements of voltage and current are taken between pairs of electrodes. Test measurements take approximately thirty (30) minutes to complete. At completion probes and equipment are removed. Measurements may require up to four (4) vehicles and up to six (6) staff on site at any one time.
2. Geologic test pits will be necessary to determine the depths of ground water. Geologic test pits are approximately twenty (20) feet long by four (4) feet wide, and will be excavated to a depth of approximately twelve (12) feet using a standard size backhoe, equivalent in size to a John Deer, Model 580. Installation of test pits may require from two (2) to four (4) persons. Once test pits have been installed, it is estimated from one (1) to two (2) persons and one (1) vehicle will return to the site for monitoring purposes. Site visits may last up to thirty minutes in duration and will occur on non-consecutive days.
3. Drill exploration will generally be performed using an eight-inch diameter auger which is usually truck-mounted and powered by an industrial engine with 200 to 300 cubic inches of displacement, equipped with a muffler and spark arrester.

The only dust hazard associated with this equipment is dust resulting from driving to and from drill sites. Prior to drilling or digging, USA (Underground Service Alert) will be contracted to mark all known utility lines. Soil samples will be obtained for testing. The depth of test holes will vary from about five (5) feet to one-hundred feet. Test holes will be spaced approximately every one-thousand feet apart. An associated truck or small loader with a "Baker Tank" will be on site to dispose of drilling mud and cutting from rotary drilling. Additional vehicles may be present at short time intervals to deliver supplies. The drilling time required for each drill hole is normally less than two (two) work days.

Geologic, surveying, and mapping activities in the study area may have a significant impact on any future design, scheduling and/or cost of a preferred alignment for a future project.

☒ III. UTILITIES

Inventory of existing utilities will consist of a review of public records and a walking survey of the Property. Records review and walking survey are completed in compliance with best practices as outlined by the California Public Utilities Commission. Site reconnaissance consists of ground surveys with minimal ground disturbance which may require shallow scraping of surface soils, one to three inches deep, in small localized areas.

☒ IV. CULTURAL RESOURCES

Cultural resources studies include both archaeological surveys and architectural and historic resource evaluations. Archaeological surveys involve walking through the Property and recording any archaeological resources that are observed on the ground surface. If the ground surface is not visible due to vegetation, surveyors may use a hand trowel to perform minimally invasive clearance of vegetation. Photographs and Global Positioning System (GPS) location readings will be taken to record archaeological resources. Architectural and historic resource evaluations will involve noting the structures present on the Property (houses, barns, sheds, etc.) and historic features (e.g., levees) within the study area. Photographs and GPS location readings will also be taken.

A site visit will be conducted in order to perform a Phase 1 Cultural Resources inventory in compliance with the California Environmental Quality Act and the National Historic Preservation Act implementing regulations. Site reconnaissance will consist of ground surveys with minimal ground disturbance and may require shallow scraping of surface soils, at a depth of one (1) to three (3) inches, in small, localized areas.

The presence of cultural resources within the study area that are eligible for listing in either the California Register, Historical Resources Register, or the National Register of Historic Places may have a significant impact on any future design, scheduling and/or cost of a preferred alignment for a future project.

☐ V. ENVIRONMENTAL STUDIES

The environmental surveys involve a variety of specialties and primarily consist of observations made by environmental specialists. Minor ground disturbances with a shovel or hand trowel may be required. Any holes will be filled and compacted immediately. Regardless of the surveys to be conducted, DWR will restore the Property, as near as possible, to its original condition.

A. **Botanical Surveys:** Surveys will include walking and photographing the Property, recording plant species, collecting unknown plant species, making wetland delineations (when applicable) and examining the soil. The Property will be accessed by small vehicle and/or a small boat. Hand-held GPS receivers, cameras, and hand-held shovels will be used to complete the surveys. Holes will be dug approximately two (2) feet wide by two (2) feet deep in order to study soils. Any disturbance of property soils will be minor and will be returned to the original condition to the best extent possible. All botanical surveys and delineations will be conducted during daylight hours during the months of February through October. It is anticipated that botanical surveys will take from one (1) to four (4) days to complete and that from one (1) to six (6) persons may be on the Property at a time. Should wetlands be found, an additional one (1) to four (4) days may be needed to complete delineations.

B. **Fisheries Studies:** Habitat evaluations for various sensitive fish species may include evaluation of water depth, flow velocities, water quality, riparian vegetation, and channel substrate. Fish sampling in adjacent sloughs may require vehicle access for transport of nets and other sampling equipment. Fisheries Studies fall into three generalized survey categories and are described as follows:

1. **Recreation Surveys** will include identification and observation of any existing recreation use on the Property as well as adjacent waterways. Identification and observations will require: documentation of the types of current activities on the Property and equipment used; the estimation of number of people who use the Property; interviews to gain information about

visitor origin, residence, and habits: determining the **season(s)** of use (if any); and scoping the potential for future recreational use. Studies will require from one (1) to two (2) persons each site visit. Equipment used for the surveys will include hand-held cameras, binoculars, and clipboards. Personnel will use a vehicle while on site. Site visits will occur between 7:00 a.m. and 7:00 p.m. A typical site visit takes less than one hour to complete; however, in some instances to obtain meaningful interviews with recreationists, some site visits may take up to four (4) hours to complete. Depending on the type of recreation being observed, personnel may visit the site once a day, or up to five times per day. Recreational activities tend to be seasonal and will be observed on non-consecutive days between the months of March and November. During those months personnel may be on the Property for up to thirty non-consecutive (30) Site visits.

2. Fisheries Surveys will include surveying all rivers and streams on the Property that may be within a sensitive fish species distribution range, and will include the visual evaluation of habitat including upland and riparian vegetation. Activities to conduct water quality sampling of temperature and dissolved oxygen content, water depth and flow-velocities will include the use of a vehicle, a small boat or kayak, binoculars, buckets, seines and nets, fish measuring boards and microscopes. The days and hours required to complete surveys will occur two (2) weeks a month, for three (3) days each week, and may last up to eight (8) hours each day in order to complete the surveys. It is anticipated that the months of surveys will occur will be between September and May.

3. Hydrologic Surveys will include identification and characterization of drainage, streams, creeks and wetland delineations, storm water drains, and storm water flow patterns that may impact water quality. Equipment required to conduct hydrologic surveys will include a vehicle and a small boat. All hydrologic surveys will occur during daylight hours and will take from two (2) to four (4) persons to complete the survey. Surveys may require from one (1) to six (6) site visits to complete and will occur on non-consecutive days during the wet and dry seasons.

C. Wildlife Surveys: Habitat evaluations will be completed for all sensitive species of reptiles and amphibians that could occur in the study area (giant garter snake, western pond turtle, California red-legged frog, and California tiger salamander) with the potential for surveys to determine whether the species are present as well as their distribution on the Property. Surveys of wildlife fall into three generalized categories and are described as follows:

1. Vernal Pool Surveys: Aerial photograph interpretation with soil characterizations for likelihood of vernal pool presence will be completed. Location of vernal pools based on vegetation, soil characteristics, ponding, and the presence of invertebrates may occur. If fairy shrimp tadpoles are present on the Property, then protocol level surveys must be performed on non-consecutive days, occurring intermittently over a period of two years to determine the presence or absence of fairy shrimp tadpoles. Once it is determined that a vernal pool has a listed species, the pool will no longer need to be surveyed. The required time on site will be determined by the pools' ability to hold water for at least two weeks to begin a survey, invertebrate fauna, and rainfall. Surveys will require the use of a vehicle, binoculars, digital camera, handheld Global Positioning System (GPS) unit, a dip net, and other collection equipment. All activities will occur during daylight hours. The anticipated months of performing surveys are between the months of November and May. Dependent upon the number of pools found (if any), four (4) surveys occurring on non-consecutive days per during the wet season, for two consecutive wet seasons, may be required.

2. Reptilian and Amphibian Surveys: Evaluations of aquatic and upland habitats for sensitive species of reptiles and amphibians will occur on the Property and will include visual walking surveys of the Property. A variety of methods will be used to complete surveys and may include trapping of species using floating aquatic traps. Equipment used will include vehicles, kayaks, shovels, thermometers, wind meters, tap measures, scales, dip-nets, seines, cast nets, minnow traps, drift-fences and pit-fall traps approximately one (1) foot in diameter dug in the ground. Any disturbance of property soils will be minor and will be returned to normal to the best extent possible. Surveys will require a crew of from one (1) to six (6) persons. Site visits to the Property will occur depending upon the habitat and species surveyed and can occur both during day and night hours. It is estimated that no more than five (5) night visits to the Property will be required. Site visits will occur on non-consecutive days and will occur during wet and dry seasons. During rainy periods site visits may occur up to seven days per week.

3. Avian Surveys: Evaluation of habitat for sensitive bird species will include observations from vehicles or walking surveys of the Property. Equipment used will include vehicles, binoculars/spotting scopes, cameras, GPS units and laptop computers. Surveys may be up to two (2) days for a maximum of eight hours in duration. It is anticipated surveys will occur from March through September and also in the month of December. Two surveys per year may be required and surveys will be conducted for multiple years.

4. Mammal Surveys: Surveys will be completed for Riparian Brush Rabbit, Riparian Woodrat, and Bat species. Surveys for Riparian Brush Rabbit and Riparian Woodrat will be via species-specific trapping in riparian scrub and riparian forest habitat. Habitat evaluation surveys for various sensitive bat species will be conducted, and in a very few instances, habitat may be surveyed for the bat species themselves, via netting and vocalization surveys. A two person crew will be involved for each survey. The type of equipment utilized includes All-terrain vehicles (ATVs), maps, GPS units, Rabbit and Woodrat traps, flagging, track plates, auto-photography units, computer equipment, and kayaks/canoes in very rare instances, bat-nets,

